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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RICHARD M. RIEHL

August 16, 1993

William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

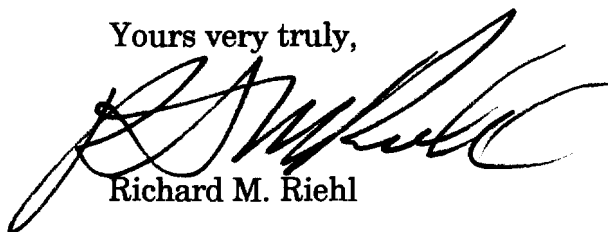
RE: Petition for Rule Making (73.202(b))
Pilot Point and Denison, Texas

Dear Mr. Caton:

On behalf of Davis Family Trust please find enclosed an original and four copies of its Petition for Rule Making. For the reasons stated in the Petition for Rule Making, Expedited consideration of this Petition is also requested.

Kindly communicate any questions directly to this office.

Yours very truly,



Richard M. Riehl

Enclosures (5)

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AUG 16 1993

Before The

Federal Communications CommissionFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No.
Table of Allotments)	RM No.
FM Broadcast Stations,)	
)	
Pilot Point and Denison)	
Texas)	

TO: Chief, Mass Media Bureau

PETITION FOR RULE MAKING

Davis Family Trust ("DFT") licensee of Station KTCY(FM) Channel 285A¹ Denison, Texas, by its attorneys and pursuant to Section 307(b) of the Communications Act and Section 1.420(i) of the Rules, hereby requests the Commission to amend the FM Table of Allotments (Section 73.202(b) of the Rules) as follows:

<u>CITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Pilot Point, Texas	<u>NONE</u>	285C2 ²
Denison-Sherman, Texas ³	244A, 269C3, 281A 285C2	244A, 269C3, 281A

In support of this request, the following is respectfully submitted:

¹ KTCY has an outstanding Construction Permit for Class C2 facilities. However, the transmitter location is different than the suggested reference point for Pilot Point. Consequently, upon a grant of this Petition, that construction permit will be modified.

² In order to meet spacing requirements a site restriction at approximately North 33° 32' 20", West 96° 57' 15" is necessary (See Attachment A, p.2).

³ Denison-Sherman is generally regarded as a single market area. According to Section 73.202(b) of the Rules, 1 FM Station is assigned to Denison-Sherman, 1 is allocated to Denison and 2 are allocated to Sherman.

BACKGROUND

Station KTCY was recently acquired by DFT out of bankruptcy. The Station had been unable to survive economically in the Denison-Sherman market and, in fact, until very recently has been off the air for over two years.

DFT has concluded that changing KTCY's community of license to Pilot Point, Texas is essential to its successful survival.⁴ In this regard, while KTCY has recently been returned to the air in fulfillment of a condition imposed by the Commission in the assignment application. It is operating with its licensed Class A facilities and is duplicating the programming of another FM station in the market until authorization to change the community of license is granted by the Commission. To do otherwise would have required DFT to establish KTCY's presence in the Denison-Sherman market on a very short term basis, only to withdraw such service upon approval of this request. The cost of establishing KTCY in two locations in a relatively short period of time would be prohibitively expensive and the people in Denison-Sherman, it is believed would be better served by not initiating a new voice that would be withdrawn in the near future. DFT does, however, ask for expedited consideration of this request so that a service unique to the area and designed to serve the needs and interests of Pilot Point can be implemented as soon as possible.

⁴ As discussed in more detail *infra.*, there are currently four FM and three AM stations assigned to the Denison-Sherman market. In fact, Channel 269C3 is listed in 73.202(b) as a Denison-Sherman allocation.

DISCUSSION

Section 1.420(i) of the Rules authorizes the Table of Allotments to be amended and modification of the license of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the present assignment. However, the Commission has emphasized that such changes in the Table of Allotments must satisfy the objectives of 47 USC § 307(b):

“...To insure that our intent is clear, however, we hereby state unequivocally that Section 1.420(i) was adopted to further the Commission's long standing pursuit of the goals underlying Section 307(b) of the Act, and that any changes in the FM and TV Tables of Allotments must be consistent with those goals.”

Modification of FM & TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7894, 7895 (1990) on reconsideration (“Recon. Order”). This proposed change in allotments satisfies all of the criteria and objectives.

MUTUAL EXCLUSIVITY

According to DFT's Technical Consultant, Lyndon H. Willoughby, the proposed allocation of Channel 285C2 to Pilot Point, Texas, is mutually exclusive with present allocation of the Channel to Denison, Texas (Attachment A, pp. 1 and 2).⁵

⁵ Mr. Willoughby's statement is included as Attachment A hereto. Attachment A, Exhibit A, p. 2 reflects a distance of 40.2 kilometers between KTCY's licensed facilities and the suggested Pilot Point reference point whereas the required spacing between co-channel Class C2 allotments is 190 kilometers.

307(b) MANDATE IS SATISFIED

First Local Service for Pilot Point

This proposed change in the Table of Allotments will bring Pilot Point its first local service. Pilot Point is an incorporated community with a population of 2,588. It has a mayor/city counsel form of government and has its own police department, school system, library and the City Pilot Point also provides other municipal type services to its residents. (Attachment A, p. 2)

Six Local Services Will Remain In Denison-Sherman

There are currently seven stations assigned to the Denison-Sherman market.⁶ Allotment of Channel 285C2 to Pilot Point will leave the following local services:

Community	Call	Chan/Freq	Facility
Denison/Sherman	KDSQ-FM	Ch 269	Class C3
Denison	KDSX(AM)	950 kHz	0.5kw.DA-U
Sherman	KIKM(FM)	Ch 244	Class A
Sherman	KWSM(FM)	Ch 281	Class A
Sherman	KXEB(AM)	910 kHz	1.0kw.DA-U
Sherman	KJIM(AM)	1500 kHz	1.0kw.DA-D

Attachment A, p. 2.

⁶ Denison and Sherman are contiguous communities and are regarded locally and by Arbitron as a single market. The Commission has also long recognized these communities as a single entity for allocation purposes. See, 4 FCC Rcd 8147 (MMB 1989) and 5 FCC Rcd 6653 (1990) (The initial allocation of Channel 269 was to Denison-Sherman).

Section 307(B) Mandates The Pilot Point Allotment

In emphasizing that every proposed change in the community of license in the Table of Allotments must satisfy the mandate of 307(b) of the Act, the Commission concluded that:

"... provision of a first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied."

Recon. Order, 5 FCC at 7896, para. 16. This proposed change in the Table satisfies this highest of current priorities while leaving Denison-Sherman with six stations and Denison, if viewed separately, with two full time stations. Finally, it is also worth noting that this is not a case of attempting to move an allotment closer to a nearby urban area. This proposal is to move the allotment 40 kilometers away from the Denison-Sherman MSA.

CONCLUSION

The foregoing establishes that the requirements of Section 1.420(i) of the Rules are satisfied and that this requested change in the Table of Allotments will further the objectives of Section 307(b) of the Act. The Commission is therefore requested to issue a Notice of Proposed Rule

Making to change the Table of Allotments (73.202(b) of the Rules) as follows:

<u>CITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Pilot Point, Texas	<u>NONE</u>	285C2 ⁷
Denison-Sherman, Texas ⁸	244A, 269C3, 281A 285C2	244A, 269C3, 281A

and to modify license of Station KTCY to specify Pilot Point, Texas as its licensed community. In the event this request is granted, DFT will promptly file an application to modify KTCY's existing facilities to comply with the suggested reference point for the allocation of Channel 285C2 at Pilot Point.⁹

Respectfully submitted,

DAVIS FAMILY TRUST



Richard M. Riehl, Esquire
Its Attorney

HALEY, BADER & POTTS
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203-1633
703/841-0606

August 16, 1993

⁷ In order to meet spacing requirements a site restriction at approximately North 33° 32' 20", West 96° 57' 15" is necessary (See Attachment A, p.2).

⁸ Denison -Sherman is generally regarded as a single market area. According to Section 73.202(b) of the Rules, 1 FM Station is assigned to Denison-Sherman, 1 is allocated to Denison and 2 are allocated to Sherman.

⁹ The suggested reference point and site restriction, North 33° 32' 20", West 96° 57' 15", is necessary to satisfy the separation requirements with Station KWNS (Ch. 285A), Winboro, Texas, Station KKDA (Ch. 283C), Dallas, Texas and Station KYYI (Ch. 284C), Burkburnett, Texas. (Attachment A, p. 2)

TECHNICAL STATEMENT IN SUPPORT
OF PROPOSED RULE MAKING TO
AMEND §73.202(b), FM TABLE OF ALLOTMENTS

on behalf of
DAVIS FAMILY TRUST
KTCY RADIO, CHANNEL 285C2

AUGUST, 1993

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WILLOUGHBY & VOSS

BROADCAST TECHNICAL CONSULTANTS
P.O. BOX 701190
SAN ANTONIO, TEXAS 78270-1190
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WILLOUGHBY & VOSS

TECHNICAL STATEMENT IN SUPPORT OF PROPOSED RULE MAKING BY THE DAVIS FAMILY TRUST FOR KTCY CH.285C2-PILOT POINT, TEXAS

The firm of Willoughby & Voss has been retained by the Davis Family Trust, licensee/permittee of KTCY, FCC File No. BPH-890202IH, to prepare the instant technical statement in support of a petition for rule making to amend the FM Table of Allotments by deleting Channel 285C2 at Denison, Texas, and assigning Channel 285C2 to Pilot Point, Texas, as its first local aural service.

1. Section 1.420(i) of the FCC's Rules specify that a proposal to change community of license must result in a preferential arrangement of allotments. A preferential arrangement of allotments results when there is a net service benefit for the communities involved. Modification of FM and TV Authorizations (New Community of License), 66 R.R.2d 877, 882 (1989). As provided by Section 1.420(i), the FCC will not consider competing applications for the use of Channel 285C2 at Pilot Point, Texas, because the proposed allotment is mutually exclusive with the current allotment of Channel 285C2 at Denison, Texas. The proposed change in allotments will not deprive Denison of its only local aural service. Further, the proposed change in allotments will result in a preferential distribution of facilities under the Commission's FM allotment priorities and policies. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989).

2. The provision of a first local aural service is the Commission's second most important FM allotment priority, co-equal with second aural service, and trails only provision of first aural service, in weight. Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88 (1982).

Thus, the allotment of Channel 285C2 at Pilot Point, Texas, as that community's first local aural service is to be preferred over leaving the channel at Denison, Texas, as a seventh local aural service (including services licensed to Sherman, Texas). It should be noted that the communities of Denison and

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Sherman, Texas, are contiguous, and the stations serving one market are considered to be serving both. The Arbitron Rating service combines the two into the Sherman-Denison market and survey area.

3. The reference allotment coordinates for the instant proposed rule making meets all Class C2 distance separation requirements of Section 73.207 of the Commission's Rules. The reference coordinates are:

33 degrees, 32 minutes, 20 seconds North Latitude

96 degrees, 57 minutes, 15 seconds West Longitude

Exhibit A is a tabulation of the allocation study. These reference coordinates are 15.7 km (bearing 0.4 degrees True), from the Pilot Point, Texas, community coordinates. This site restriction is necessary to meet the distance separation requirements to KWNS Ch. 285A at Winnsboro, Texas, KKDA Ch.283C at Dallas, and KYYI Ch. 284C at Burkburnett. This proposed facility will serve all of the community of Pilot Point with the required 3.16 mV/m contour.

4. The community of Pilot Point, Texas, is an incorporated municipality, having its own Mayor and city council, a police department and provides other services to its residents. The 1990 Census figure for Pilot Point proper is 2,588. Pilot Point has its own independent school district, library and newspaper. Adoption of this proposal will provide Pilot Point with "first local aural transmission service". The allotment of Channel 285C2 to Pilot Point, Texas, will provide the community with a vital outlet for local expression.

5. The instant proposal is mutually exclusive with the present assignment of KTCY-FM to Denison, Texas. The deletion of Channel 285C2 at Denison, will still leave that community with six local services, three FM and three AM assignments.

COMMUNITY	CALL	CHAN/FREQ	FACILITY
Denison	KDSQ-FM	269/101.7 MHz	Class C3
Denison	KDSX-AM	950 KHZ	0.5 KW, DA-U
Sherman	KIKM-FM	244/96.7 MHz	Class A
Sherman	KWSM-FM	281/104.1 MHz	Class A
Sherman	KKEB-AM	910 KHZ	1.0 KW, DA-U
Sherman	KJIM-AM	1500 KHZ	1.0 KW, DA-D

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6. In light of the above facts, and the desire of the Commission for efficient spectrum usage, it is requested that the Table of Allotments contained in Section 73.202(b) of the Commission's Rules be amended to read as follows:

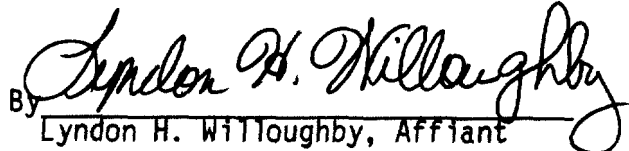
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Denison, TX	269C3, <u>285C2</u>	269C3
Pilot Point, TX	none	<u>285C2</u>

Upon allotment of the above requested changes, formal application for the respective facility will be filed with the FCC.

CERTIFICATION

The foregoing was prepared on behalf of the Davis Family Trust, by, or under the immediate supervision of Lyndon H. Willoughby, of Willoughby & Voss, San Antonio, Texas. The affiant's qualifications are contained in previous filings and are a matter of record with the Federal Communications Commission. The statements and data contained herein are true and correct of his own knowledge, except as to statements made on information and belief and as to those statements, he believes them to be true and correct.

August 4, 1993

By 
Lyndon H. Willoughby, Affiant

Technical Consultant to:
DAVIS FAMILY TRUST

WILLOUGHBY & VOSS

FM Channel Study for Channel 285C2 at 33-32-20 96-57-15
 Safe Distance of 25.0 Kilometers
 New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel Call Applicant/Licensee	City	State	Lat Long	Distance Bearing	Regrd Clear
231C KLTY LIC Fort Worth Metroplex Broadcasting, Inc.		TX	32-35-22 105.31 96-58-10 180.78	35.0 70.31	
231C USED Fort Worth		TX	32-35-22 105.31 96-58-10 180.78	35.0 70.31	
283C KKDAFM LIC Dallas Service Broadcasting Corp.		TX	32-35-22 105.31 96-58-10 180.78	105.0 0.31	
283C USED Dallas		TX	32-35-22 105.31 96-58-10 180.78	105.0 0.31	
284A USED Texarkana		AR	33-24-46 268.01 94- 4-29 92.20	106.0 162.01	
284C USED Burkburnett		TX	34- 5-35 188.50 98-52-44 289.56	188.0 0.50	
284A VACANT Antlers		OK	34-13-54 146.83 95-36- 6 58.07	106.0 40.83	
284A KTOY LIC Texarkana Jo-A1 Broadcasting, Inc.		AR	33-27-25 257.67 94-10-59 91.26	106.0 151.67	
284C KYYI LIC Burkburnett Y-104 Broadcasting Company, Inc.		TX	34- 5-35 188.50 98-52-44 289.56	188.0 0.50	
285C2 KTCY CP Denison Sunbelt Wireless Company		TX	33-40-30 17.39 96-51-40 29.75	190.0 -172.61	
285A KTMC FM DEL McAlester Thomas H. Payne		OK	34-58- 8 192.37 95-46-21 34.13	166.0 26.37	
285A USED Winnsboro		TX	32-56-32 166.51 95-18-53 112.97	166.0 0.51	
285A ADD Pittsburg Cavalier Broadcasting		TX	33- 0-21 197.09 94-56-10 106.90	166.0 31.09	
285C3 NEW APP Dublin Akiva N. Gerstein		TX	32- 5-22 198.90 98-12-18 216.42	177.0 21.90	

KTCY-FM PRM
EXHIBIT A

WILLOUGHBY & VOSS

FM Channel Study for Channel 285C2 at 33-32-20 96-57-15
 Safe Distance of 25.0 Kilometers
 New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel Call Applicant/Licensee	City	State	Lat Long	Distance Bearing	Reqr'd Clear
285A KHPA Newport Broadcasting Co.	LIC Hope	, AR 91M	33-43-10 93-29- 7	322.49 85.48	166.0 156.49
285D K285CN Fred H. Baker, Jr.	LIC Fort Smith	, AR OM	35-20-45 94-24-20	308.29 48.73	0.0
285A KPLE KTEM Radio, Inc.	LIC Temple	, TX 91M	31- 3-56 97-23-57	277.45 188.81	166.0 111.45
285A KYCXFM First American Broadcasting Corp.	LIC Mexia	, TX 107M	31-42-25 96-31-23	207.14 168.62	166.0 41.14
285C2	USED Denison	, TX OM	33-45-22 96-46-22	29.39 34.88	190.0 -160.61
285A KWNS Winnsboro Broadcasting Co., Inc.	LIC Winnsboro	, TX 86M	32-56-32 95-18-53	166.51 112.97	166.0 0.51
285A KTMCFM Trayne Communications, Inc.	LIC Mcalester	, OK 138M	34-58- 7 95-46-22	192.33 34.13	166.0 26.33
285A KTCY Sunbelt Wireless Company	LIC Denison	, TX 98M	33-42-10 96-34- 5	40.18 62.99	166.0 -125.82
285A KNTL Broadcast Equities	LIC Bethany	, OK 91M	35-29-58 97-37- 8	225.88 344.51	166.0 59.88
285A KREK Big Chief Broadcasting Company of Bristo	LIC Bristow	, OK 107M	35-47-11 96-27-35	253.40 10.16	166.0 87.40
285A	USED Bristow	, OK OM	35-47-11 96-27-35	253.40 10.16	166.0 87.40
285A	USED Bethany	, OK OM	35-29-58 97-37- 8	225.88 344.51	166.0 59.88
285A	USED Mexia	, TX OM	31-42-25 96-31-23	207.14 168.62	166.0 41.14
285A	USED Mcalester	, OK OM	34-58- 8 95-46-21	192.37 34.13	166.0 26.37

KTCY-FM PRM
EXHIBIT A

WILLOUGHBY & VOSS

FM Channel Study for Channel 285C2 at 33-32-20 96-57-15
 Safe Distance of 25.0 Kilometers
 New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel	Call	City	State	Lat	Distance	Regrd
Applicant/Licensee				Long	Bearing	Clear
285C3		VACANT Dublin				
	0.00 kW		, TX	32- 2-57	202.63	177.0
			OM	98-12-24	215.72	25.63
285A KWNF	DEL	Winnsboro				
Cavalier Broadcasting	0.00 kW		, TX	32-56-32	166.51	166.0
			OM	95-18-53	112.97	0.51
285A		USED Hope				
	0.00 kW		, AR	33-43-10	322.49	166.0
			OM	93-29- 7	85.48	156.49
285C3 NEW	APP	Dublin				
David J. Shepherd, Individually	25.00 kW		, TX	32- 5-34	192.48	177.0
			100M	98- 5-27	213.88	15.48
286A KTMC FM	ADD	Mcalester				
Thomas H. Payne	0.00 kW		, OK	34-58- 8	192.37	106.0
			OM	95-46-21	34.13	86.37
286A		USED Lindsay				
	0.00 kW		, OK	34-49-54	156.16	106.0
			OM	97-37-30	336.86	50.16
286A KBLP	LIC	Lindsay				
S. Cent. Okla B/Cting & Adv. Corp.	0.85 kW		, OK	34-54- 1	161.18	106.0
			172M	97-33-56	339.71	55.18
287C		USED Dallas				
	0.00 kW		, TX	32-35- 7	105.77	105.0
			OM	96-58- 6	180.72	0.77
287C KYNG	LIC	Dallas				
Alliance Broadcasting Dallas, L.P.	100.00 kW		, TX	32-35- 7	105.77	105.0
			476M	96-58- 6	180.72	0.77
288A		USED Chickasha				
	0.00 kW		, OK	35- 0-58	187.21	55.0
			OM	97-56-15	331.35	132.21
288A		USED Seminole				
	0.00 kW		, OK	35-12-53	186.93	55.0
			OM	96-44-26	5.97	131.93
288A KXXK	CP	Chickasha				
Brewer Broadcasting Corporation	3.30 kW		, OK	35- 0-38	186.42	55.0
			135M	97-55-54	331.40	131.42
288D K288DB	LIC	Wichita Falls				
J and J Broadcasting	0.12 kW		, TX	33-53-47	152.47	0.0
			OM	98-32-33	285.51	
288A KIRC	DEL	Seminole				
Herman L. Jones	0.00 kW		, OK	35-12-53	186.93	55.0
			OM	96-44-26	5.97	131.93

KTCY-FM PRM
 EXHIBIT A

WILLOUGHBY & VOSS

FM Channel Study for Channel 285C2 at 33-32-20 96-57-15
Safe Distance of 25.0 Kilometers
New (6 kW) Class A spacings employed

***** STANDARD DISCLAIMER APPLIES *****

Channel	Call	City	State	Lat	Distance	Regrd
Applicant/Licensee				Long	Bearing	Clear

=====

288A	KIRC	LIC	Seminole	, OK	35-12-53	186.93	55.0
One Ten Broadcast Group, Inc.				4.60 kW 112M	96-44-26	5.97	131.93
288D	K288DB	CP MOD	Wichita Falls, etc.	, TX	33-53-47	152.47	0.0
J & J Broadcasting				0.07 kW OM	98-32-33	285.51	
288A	KQXC	CP	Wichita Falls	, TX	33-53-50	152.49	55.0
Red River Communications, Inc.				3.00 kW 100M	98-32-33	285.55	97.49
288A	KXXK	LIC	Chickasha	, OK	35- 0-58	187.21	55.0
Brewer Broadcasting Corporation				3.00 kW 59M	97-56-15	331.35	132.21